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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 170.

MANUEL S. DE CAMBRA, PLAINTIFF IN ERROR,

vs.

HANNAH ROGERS AND FRANK J. ROGERS,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR DEFENDANTS IN ERROR.

FRANKLIN H. MACKEY,
For Defendants in Error.

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This case, the decision in which in the court below will be found reported in 132d Cal., 502, under the title of Rogers *vs.* De Cambra, is an action of ejectment brought in the superior court of the county of Alameda, California, to recover 176.60 acres of land located in said county. De Cambra (the defendant below) filed an answer and an alleged cross-complaint, set forth in the record.

A demurrer was filed to the cross-complaint which was sustained by the court, and the case then came to trial without a jury, a jury trial having been specially waived by the respective parties in open court (R., 15).

Thereupon, as stated in the record, page 16, "oral and documentary evidence was offered, produced, and heard on behalf of the plaintiffs, and the defendant having no evi. dence whatsoever, the case was submitted to the court for its decision," which in due course filed its findings of fact and conclusions of law (R., 16).

These in substance were:

1. That the plaintiffs were at the commencement of the action the owners in fee of the property described in the complaint and entitled to the possession thereof.

2. That the defendant was, at said time, wrongfully in possession of about ninety acres of said land and withheld and detained the same from the plaintiffs.

As a conclusion of law from the foregoing facts, the court found that the plaintiffs were entitled to the recovery of the land so withheld by the defendant, and judgment was rendered accordingly.

The defendant (plaintiff in error) reserved certain exceptions, to be mentioned presently, and, a new trial being refused, the case was taken by writ of error to the supreme court of California, where the judgment was affirmed, whereupon a writ of error was sued out from that court to this, and the case is now here upon the said bill of exceptions (R., 18).

I.

The exceptions are four in number. The second and third are to the effect that "the evidence is insufficient to sustain the findings of fact by the court." This court, as is well known, will not interfere with the findings of fact of the State court upon the evidence. We will therefore not discuss these exceptions (Myrick *vs.* Thompson, 99 U. S., 291, 294). "A writ of error brings up matters of law only" (Dower *vs.* Richards, 151 U. S., 163).

The real contention in the case is comprised in the first exception, viz., over the action of the court in sustaining the demurrer to the cross-complaint. The argument of counsel for plaintiff in error upon this exception may be resolved into two propositions, both of which are plainly untenable:

1. That the Land Department erred in its conclusions upon the evidence by which it awarded the land to the defendants in error. It is too well settled, however, ever to be overturned that the findings and conclusions of the officers of the Land Department are conclusive when rendered within the scope of their powers.

Shipley *vs.* Cowan, 91 U. S., 330; French *vs.* Tyan, 93 U. S., 172; Moore *vs.* Robbins, 96 U. S., 530; Lansdale *vs.* Daniels, 100 U. S., 118; Marquez *vs.* Frisbie, 101 U. S., 473; United States *vs.* Atherton, 102 U. S., 374; Quinley *vs.* Conlon, 104 U. S., 426; Smelting Co. *vs.* Kemp, 104 U. S., 647; Steel *vs.* St. Louis Smelting Co., 107 U. S., 465; Lee *vs.* Johnson, 116 U. S., 51; United States *vs.* Maxwell Co., 121 U. S., 325.

II.

The second proposition involves (with apologies to my opponent) a frivolous and inartificially framed charge, made solely upon information and belief, that the Secretary of the Interior, on the hearing of the appeal to him, "never read a word of the evidence submitted to him, * * * but that subordinates—to wit, clerks—employed by the Government of the United States in the said Department of the Interior constructed the said decision * * * and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing, or considering any of the said evidence so taken," &c.

The plaintiff in error contends that inasmuch as the cross-complaint was demurred to, this charge is to be taken as admitted. It is a well-settled rule, however, that a demurrer admits only such facts as are well and sufficiently pleaded. It does not admit immaterial facts (Aurora City *vs.* West, 7 Wall., 82, 99), nor facts which are insufficiently stated (Ried *vs.* Field, 83 Va., 26, 31). This is exactly the case with this allegation in the cross-complaint, for aside from the looseness of the allegation, altogether made upon information and belief, and the failure to allege in what respect the decision complained of was erroneous, the facts set up are not such as a court of law will listen to in an action of ejectment based upon a patent issued by the United States Land Office. The cases of Smelting Co. *vs.* Kemp, 104 U. S., 636, and Steel *vs.* Smelting Co., 106 U. S., 447, both of which are supported by numerous other decisions of this court, are conclusive as to the untenability of such a defense. In the first of these cases it was held—I quote for conciseness from the head-note—that:

"A patent duly signed, countersigned, and sealed, which at the time it was issued, the Land Department had, under the statute, authority to convey *cannot be collaterally impeached in an action at law;* and the finding of the Department touching the existence of certain facts, or the performance of certain *antecedent* acts, upon which the lawful exercise of that authority may in a particular case depend, cannot in a *court of law* be questioned.

"If in the issuing of a patent the officers of that Department take mistaken views of the law, or draw erroneous conclusions from the evidence, *or act from either imperfect views of duty or* CORRUPT MOTIVES, the party aggrieved cannot set up such matters in a court of law to defeat the patent. He must resort to a court of equity."

So, in the subsequent case of Steel *vs.* Smelting Co., this court said:

"We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public

lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that Department, overlook our decisions on the subject. That Department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable, except by *direct proceedings* for its annulment or limitation. Such has been the uniform language of this court in repeated decisions."

See also Noble *v.* Union River R. R., 147 U. S., 165.

A cross-complaint very like the one at bar was considered in Grant *vs.* Oliver, 91 Cal., 158. That case was referred to by the court below in this case and largely quoted from. It is difficult to suppress the suspicion that the pleader at the time of drafting his cross-complaint in the present case had this overruled cross-complaint in Grant *vs.* Oliver before him, and availed himself of its frivolous suggestions in constructing his defense. Of these allegations, however, that court said:

"The allegations of the cross-complaint, with respect to the conduct of the officers of the Land Department, *are so absurd* that we do not deem it necessary to notice them. If they were true, and could be proved, the defendant would not be entitled to the relief he claims in *this* action."

So also with the allegations that the appeal of Rogers from the decision of the register and receiver was invalid, because, as it is alleged, it was taken after the time provided by the rules of the Department. But, besides being obnoxious to the rule against collateral attack, these are matters entirely within the control of the Department. Its rules are

directory only, and their enforcement is within the discretion of the Department (Smelting Co. *vs.* Kemp, *supra;* Gage *vs.* Gunther, 136 Cal., 338).

III.

The second exception is to the action of the court below in admitting in evidence the patent to Enos J. Rogers, deceased husband of one of the plaintiffs below and the father of the other. The exception was upon the ground that the patentee was dead at the time the patent was issued in his name (R., 18). The exception does not form any part of the assignments of error, and is not even alluded to in the argument presented by counsel for plaintiff in error in his brief, and we may well assume it to be abandoned in view of the provisions of section 2448, R. S. U. S., which provides that—

"Where patents for public lands have been or may be issued, in pursuance of any law of the United States, to a person who had died, or who hereafter dies, before the date of such patent, the title to the land designated therein *shall inure* to and become vested in the heirs, devisees, or assignees of such deceased patentee as if the patent had issued to the deceased during life."

IV.

NO FEDERAL QUESTION INVOLVED.

Having reviewed the whole record, it is respectfully submitted that the plaintiff in error has not brought to this court a question that it is authorized to review under section 709 of the Revised Statutes. The mere fact that the plaintiff in error *avers* that he has been deprived of some right, title, privilege, or immunity under the statutes of the United States does not create a Federal question.

Hamblin *vs.* Western Land Co., 147 U. S., 531.

State of Iowa v Rood S.C.U.S. Oct. Term 1904

The burden of the cross-complaint is that De Cambra was defrauded by certain alleged acts of Rogers in obtaining a patent for Government land which he, De Cambra, would have been entitled to receive had Rogers not tricked him. That was a matter of fact which was submitted to the Land Office, and that office decided against De Cambra. He alleges, however, that the Secretary of the Interior without reading the testimony or writing the opinion, though it is admitted he signed it, decided against him. In what matter of *law* the decision was erroneous is not stated. He afterwards, when sued in ejectment, sets up these matters as a defense in a cross-complaint. The court below in sustaining the demurrer decides that it cannot inquire into facts already adjudicated. That is not a decision upon a Federal question, but an application of a well-known principle of the common law to a bad pleading. What Federal question under the decisions of this court is involved in this case? Questions of *fact* do not involve questions of Federal *law* (Quimby *vs.* Boyd, 128 U. S., 488, 489); neither do questions of common law.

In Dower *vs.* Richards, 151 U. S., 658, 668, this court, speaking through Mr. Justice Gray, said:

"That this court, in an action at law, at least, has no jurisdiction to review the decision of the highest court of a State upon a pure question of fact, although a Federal question would or would not be presented according to the way in which the question of fact was decided, is clearly settled by a series of later decisions."

The learned justice then cites and quotes from a number of cases supporting this statement, which are hereinafter cited. If this judgment be reversed, it must necessarily be upon the ground that the lower court should have permitted De Cambra to prove (if he could) the allegations of fraud which he makes in his cross-complaint and which have been already passed upon by the Land Department. Can it be

said that the question whether or not this court should reverse a judgment at law for such a purpose involves the question whether the court below has decided against the *validity* of some right, title, privilege, or immunity claimed by the plaintiff in error under the Constitution and laws of the United States?

In Moreland *vs.* Page, 20 How., 522, 523, this court dismissed a writ of error to review the judgment of a State court, saying:

"It is a question of *fact*, depending on monuments to be found on the ground, documents in the land office, or the opinion of experts or surveyors appointed by the court or the parties. If the accident to the controversy that both parties *claim title under the United States* should be considered as sufficient to bring it within our jurisdiction, then every controversy involving the title to such lands, whether it involve the inheritance, partition, devise or sale of it, may with equal propriety, be subject to the examination of this court in all time to come."

In Carpenter *vs.* Williams, 9 Wall., 785, 786, Mr. Justice Miller, delivering the opinion of the court, said:

"It is a mistake to suppose that every suit for real estate, in which the parties claiming under the Federal Government are at issue as to which of them is entitled to the benefit of that title necessarily raises a question of Federal cognizance. If this were so, the title to all the vast domain, once vested in the United States, could be brought from the State courts to this tribunal."

In Crary *vs.* Devlin, 23 Lawyers' Reports, 510, 511, in an action to recover the price of alcohol sold, the defendant contended that the sale was unlawful because of a violation of the internal-revenue laws of the United States. The court of appeals of New York gave judgment for the plaintiff, because no violation was proved. This court dismissed the writ of error, Chief Justice Waite saying:

"The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation."

In California Powder Works Co. *vs.* Davis, 151 U. S., 389, 393, Chief Justice Fuller, delivering the judgment of the court, said:

"It is equally well settled that where our jurisdiction depends upon the denial by a State court of a title, right, privilege, or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that such title, right, privilege, or immunity was specially set up or claimed at the *proper* time and in the *proper* way, and that the decision was against the right so set up or claimed."

It is, I respectfully submit, too plain for argument that plaintiff in error has not "at the proper time and in the proper way" set up any such title, right, privilege, or immunity.

For the foregoing reasons it is submitted that the judgment of the court below should be affirmed.

FRANKLIN H. MACKEY,
For Defendants in Error.